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COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

KATHLEEN T., Appellant, v. ARIZONA DEPARTMENT OF ECONOMIC SECURITY and ALLISON T., Appellees.	2 CA-JV 2009-0076 DEPARTMENT A MEMORANDUM DECISION Not for Publication Rule 28, Rules of Civil Appellate Procedure

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. J184362

Honorable Kathleen Quigley, Judge Pro Tempore

AFFIRMED

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K E L L Y, Judge.

¶1 Kathleen T. appeals from the juvenile court's order terminating her parental rights to her daughter Allison T., born April 2006, on the grounds of mental illness and length of time in care. *See* A.R.S. §§ 8-533(B)(3), (B)(8)(c). She challenges the sufficiency of the evidence to support the juvenile court's following findings: that her mental illness renders her unable to discharge her parental responsibilities and that she will not be able to exercise effective parental care and control in the near future. We affirm for the reasons stated below.

¶2 Kathleen first learned she was pregnant with Allison in April 2006, when she went into labor. In late February 2007, Child Protective Services (CPS) investigated reports that Kathleen was neglecting Allison, who was then ten months old. The home was filthy and hazardous for Allison. Allison was not gaining weight, and it appeared Kathleen was having trouble reading Allison's cues to determine when the child was hungry. Kathleen voluntarily placed Allison in foster care for ninety days. A week later, a pediatrician diagnosed Allison with "severe[] failure to thrive." By April 2007, Allison had improved substantially and was returned to Kathleen's care. Although a variety of in-home services were provided to Kathleen, by November 2007, the home was again unsanitary and unsafe. Allison's head was infected because of lice, and she had lost the

weight she had gained while out of the home. Additionally, Kathleen was not regularly engaging in services. Allison was again removed from Kathleen's home and placed in foster care, and the Arizona Department of Economic Security (ADES) filed a dependency petition.

¶3 Kathleen admitted allegations in an amended dependency petition, and the juvenile court adjudicated Allison dependent in January 2008. ADES continued to provide Kathleen with a panoply of services designed to accomplish the case-plan goal of reunification, including continued parent-aide services, individual therapy, in-home counseling, psychological evaluations, and a bonding and attachment assessment with a child and family therapist. At a dependency review hearing in February 2009, the juvenile court found "that, although the mother [was] in compliance with the case plan," neither she nor the father had "remedied the circumstances that cause the child to remain in an out-of-home placement and to be dependent." The court added that Allison could not be placed with either parent "without a substantial risk of harm to her mental, physical or emotional health and safety." The juvenile court changed the case plan to severance and adoption, and ADES complied with the court's direction to file a motion to terminate Kathleen's parental rights, alleging as grounds mental illness and length of time in care, pursuant to § 8-533(B)(3) and § 8-533(B)(8)(c), respectively.

¶4 After a three-day contested severance hearing in May and June 2009, the juvenile court granted the motion, terminating Kathleen's parental rights on both grounds.[1]

¶5 The court terminated Kathleen's parental rights in a thorough, well-reasoned minute-entry order, in which it entered extensive findings of fact and conclusions of law. The court reviewed the history of the case and summarized the services Kathleen had been provided and the testimony of numerous witnesses. Consistent with § 8-533(B)(8)(c), the juvenile court found Allison had been out of the home in court-ordered care for fifteen months or longer and that clear and convincing evidence established Allison could not be returned to Kathleen's custody, that ADES had "made diligent and reasonable efforts to offer appropriate reunification services and there is a substantial likelihood [Kathleen] will not be capable of exercising proper and effective parental care and control in the near future." With respect to § 8-533(B)(3), the juvenile court found clear and convincing evidence established Kathleen was "unable to discharge parental responsibilities because of a mental illness[,] and there are reasonable grounds to believe that the condition will continue for a prolonged indeterminate period." The court added that, as Allison's needs continued to change, Kathleen would be unable "to safely and properly parent [her] now or in the future."

¶6 Before terminating a parent's rights, the juvenile court must find at least one statutory ground for severance established by clear and convincing evidence, and it

[1]The court terminated the father's parental rights as well. However, he is not a party to this appeal.

must find by a preponderance of the evidence that termination of the parent's rights is in the child's best interests. *Kent K. v. Bobby M.*, 210 Ariz. 279, ¶ 22, 110 P.3d 1013, 1018 (2005). In reviewing the court's order we do not reweigh the evidence that was presented, rather we view the evidence in the light most favorable to affirming the order. *See Jesus M. v. Ariz. Dep't of Econ. Sec.*, 203 Ariz. 278, ¶ 12, 53 P.3d 203, 207 (App. 2002). We will not disturb the order so long as there is reasonable evidence supporting the factual findings upon which that order is based. *Audra T. v. Ariz. Dep't of Econ. Sec.*, 194 Ariz. 376, ¶ 2, 982 P.2d 1290, 1291 (App. 1998).

¶7 On appeal, Kathleen challenges the sufficiency of the evidence to support two findings, each of which corresponds to a separate statutory ground. These findings are not only similar, in that they relate to whether Kathleen will be able to discharge her parental responsibilities in the future, they are also interrelated because Kathleen's mental illness and deficiencies and their effect on her ability to benefit from services are the reasons Allison has remained in court-ordered care. Specifically, Kathleen contends the evidence was not clear and convincing that she was and would continue to be unable to parent Allison because of her mental illness or mental deficiencies. She also contends there was "no reasonable evidence" that there is a "substantial likelihood that [she] will not be capable of exercising proper and effective parental care and control in the near future." She argues she had complied with the case plan and had benefitted from the services ADES had provided. Kathleen relies on evidence that was in her favor, suggesting the "pessimistic" testimony of psychologist Lorraine Rollins was not entitled

to as much credit as that of other service providers, because Dr. Rollins had spent very little time with her. She contends the concern of certain witnesses that Allison would be at risk for neglect were nothing more than "musings, possibilities and speculations [that] [cannot] possibly rise to the level of convincing a reasonable fact finder by the standard of clear and convincing evidence that there was a substantial likelihood that Kathleen would be unable to effectively parent Allison in the near future."

¶8 Kathleen is, in effect, asking this court to reweigh the evidence. She urges us to give less credit to Dr. Rollins's reports and testimony and to credit, instead, the testimony of various other witnesses who testified about the progress she had made during the dependency proceeding and about her efforts to comply with the case plan. But we will not reweigh the evidence. Rather, we recognize that, as the trier of fact, the juvenile court "is in the best position to weigh the evidence, observe the parties, judge the credibility of witnesses, and resolve disputed facts." *Ariz. Dep't of Econ. Sec. v. Oscar O.*, 209 Ariz. 332, ¶ 4, 100 P.3d 943, 945 (App. 2004); *see also Jordan C. v. Ariz. Dep't of Econ. Sec.*, 223 Ariz. 86, ¶ 18, 219 P.3d 296, 303 (App. 2009).

¶9 The juvenile court stated in the beginning of its order that it had "carefully considered all of the evidence, including the testimony of witnesses and their credibility and demeanor while testifying, the legal file, the exhibits and the arguments of counsel." The court clearly found Dr. Rollins credible and gave her testimony and reports the weight to which it deemed they were entitled. The court summarized in great detail the results of Rollins's evaluations and the reasons Rollins was pessimistic about the

likelihood Kathleen would be able to adequately and, most importantly, independently, meet Allison's needs in the future. Rollins had related Kathleen's parenting difficulties to her mental illness and deficiencies, conditions which Kathleen does not dispute. In her October 2008 report, which the juvenile court noted, Rollins had stated that, because of Kathleen's borderline intellectual functioning and despite the fact that she had received "one-to-one parenting instruction[;] she still has not demonstrated that she can independently, consistently meet" Allison's needs. Rollins added that she was concerned about Kathleen's poor judgment, which Rollins felt could negatively affect her "parenting decisions to the detriment of her daughter."

¶10 The juvenile court noted, too, that it had considered the evaluation conducted by Kathleen's expert, psychologist Michael German, and his testimony. The court pointed out Dr. German agreed with Dr. Rollins and was concerned about the extensive amount of supervision and guidance Kathleen would need in order to be able to parent Allison. The juvenile court noted further that Dr. German agreed Kathleen "has followed a pattern – she first doesn't recognize a problem and then she doesn't know how to ask for help." The court clearly gave these and other witnesses the credit to which it believed they were entitled, pointing out it had considered the testimony of witnesses Kathleen had called to testify on her behalf and her own testimony. We have no basis for interfering with the court's weighing of the evidence.

¶11 The juvenile court noted, too, many of the factors Kathleen urges this court to consider in evaluating the sufficiency of evidence. The court found that Kathleen had

"been in complete compliance" with the case plan after Allison was removed for the second time in November 2007. The court specified "[t]he concern in this case . . . is not [Kathleen's] participation in services but whether [she] has the ability to learn, maintain and benefit from the services she was provided." The court stated Kathleen had "worked hard," and "[i]t is . . . clear that she truly loves Allison." But, the court observed, "love alone is not sufficient." The court added that although Kathleen "has developed the skills to visit with her daughter during a 1-2 hour visit . . . she does not have the ability to be a full-time parent to Allison at this time or in the near future."

¶12 The evidence established that, after more than fifteen months, Allison still could not safely be returned to Kathleen's care. The record contains reasonable evidence to support the court's findings, including evidence that Kathleen needed close supervision, that directions often had to be repeated, and that she would not be able to adjust to a child's evolving needs. Dr. Rollins recognized Kathleen was "highly motivated" and wanted to be reunited with Allison, but without constant supervision, because of "her intellectual functioning/ability" she appears to be unable to "mak[e] and sustain[] progress in developing adequate parenting skills." Although there was evidence Kathleen had progressed, to the extent there was conflicting evidence about Kathleen's current ability to parent and the likelihood that she would be able to do so independently in the future, it was for the juvenile court, not this court, to resolve those conflicts and to draw reasonable inferences permitted by the evidence. *See Vanessa H. v. Ariz. Dep't of Econ. Sec.*, 215 Ariz. 252, ¶ 22, 159 P.3d 562, 567 (App. 2007).

¶13 The record contains reasonable evidence to support the court's factual findings. Therefore, we affirm the juvenile court's order terminating Kathleen's parental rights to Allison.

VIRGINIA C. KELLY, Judge

CONCURRING:

JOSEPH W. HOWARD, Chief Judge

PHILIP G. ESPINOSA, Presiding Judge